

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

PETITION FOR RECONSIDERATION

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and public education services to many Fortune 1000 corporations. InfoCision submitted comments by Steve Brubaker on May 5, 2003.

InfoCision is a leader in several highly defined niche teleservices markets and operates with the highest level of corporate ethics. We also have an unmatched reputation for quality, integrity and customer service. InfoCision's mission is to be the highest quality teleservices provider of the 21st Century.

InfoCision has taken extensive measures to come into compliance with the Federal Trade Commission's Telemarketing Sales Rule and this Commission's rules implementing the Telephone Consumer Protection Act. It has invested nearly \$2 million in resources and new equipment in order to comply with the new rules, including costly equipment to satisfy the requirements that a call placed through a predictive dialer must be connected within 2 seconds of the completion of the recipient's greeting – a new standard for which the technology has had to be developed – as well as the 4 rings/15 seconds requirement. However, in the course of making these substantial changes, InfoCision has become aware that to reduce the abandonment rate from 5% to 3% would so greatly increase the cost of doing business as to render telemarketing far too costly for many campaigns. The Commission's decision does not adequately address these costs to businesses.

In particular, we have determined by testing sample campaigns that complying with the new abandonment rate standard of 3% would decrease our operating efficiency by at least 18%. The economic damage caused by this loss of efficiency certainly will be more than several million dollars per year to my business alone. This loss may require us to reduce employment by potentially hundreds of jobs.

Put differently, having live operators satisfy a 3 %, rather than 5 %, standard reduces the efficiency of the campaign by at least 18%, meaning the cost of conducting the campaign is 18%

higher. Telemarketing services do not have margins anywhere close to 18%, and are not able to recover this increased cost from the sellers. Telemarketing is a very low margin business. A reduction in efficiency of 18% will effectively foreclose telemarketing as a viable advertising option for many companies.

The loss of this business will have serious effects on InfoCision. We estimate that we would need to significantly reduce calls for our commercial clients representing nearly 15% of our total business with potentially serious effects on more than 400 current employees and future employment growth in our fastest growing division.

II. Abandonment Standard

The Report and Order considers Abandoned Calls at Paragraphs 146-159. The substantive rule provision creating the 3% abandonment standard will be found at 47 C.F.R. §64.1200(a)(6). That section states that no person or entity may “[a]bandon more than three percent of all telemarketing calls that are answered live by a person, measured over a 30-day period.”

The Commission’s rules on abandoned calls would cost InfoCision millions of dollars per year in lost efficiency with little gain in consumer privacy or prevention of fraud. As set forth below, the Commission should adopt the prevailing industry standard of a 5% limit on abandonment over a 30 day period to balance legitimate business interests with those of consumers.

ARGUMENT

In its Regulatory Flexibility Analysis, the Commission stated that it “has determined that a three percent maximum rate on abandoned calls balances the interests of businesses that derive economic benefits from predictive dialers and consumers who find intrusive those calls delivered by predictive dialers.” Report & Order, Appendix B, ¶ 35. In support of that statement, the

Commission cites paragraphs 150-152 of the Order. The cited provisions of the Order, however, do not advance an adequate record basis for such decision.

A. The Commission Did Not Take Relevant Factors Into Consideration In Adopting The 5% Standard

The Commission's adoption of the 3% abandonment standard is flawed in at least two substantial respects: (1) it did not take into account that the cost of complying could so reduce telemarketing efficiencies as to make telemarketing services uncompetitive; and (2) it did not consider the impact of its other regulations – most notably, playing a recording identifying the caller, the Caller ID and Do Not Call requirements – on the consumer benefits alleged to be gained by the 3% standard. As set forth below, in conjunction with these other changes, there is no additional gain caused by the 3% standard rather than a 5% standard.

Attached hereto as Exhibit A are a series of summaries of tests, and a legend describing each of the codes or terms used in the charts, conducted by my business in an attempt to quantify the effect that a 3% abandonment standard would have on our business. These charts show, over a period of time, that a 3% standard will have a devastating effect on our efficiency with no evidence of gain to consumers.

We ran these tests using a variety of parameters and campaigns at different times to provide a more accurate measure of the effect of the 3% standard on our business. We use the average of these tests to conclude that the 3% standard will devastate this area of our business. On average, meeting a 3% abandonment standard caused a 20% decrease in completed calls per hour for these tests. That decrease would mean these programs would no longer be profitable, and our clients would not conduct these campaigns.

The Abandonment rate is set using our dialer and can not be exactly achieved. In these tests, we set target rates of 5% abandonment, to show our efficiency when meeting industry

standards, and 3% abandonment, to show the effect of the new rule. Calling efficiency is measured two different ways - connect rate ("Connect Rate") and completed calls per employee per hour ("Completed Calls per Hour"). Completed calls per hour is the most widely-used measure of efficiency used in our industry, although employee hours, sales per hour, connect rate, and other measures can be used as well.

I have removed the names of the specific clients but we used a variety of campaigns (including three tests using exempt calls on behalf of nonprofit organizations) to provide more accuracy.

Tests for client campaigns A-D were conducted on March 28 and 29, 2003, using a financial services campaign. We used one line per employee for this test. A dialer can be set to use more than one line per employee which could increase abandonment. On average, our completed calls per hour decreased by 24.5% in this series of tests.

Tests for client campaign E were conducted on March 28 and 29, 2003, using another financial service campaign. We used two lines per employee for this test. On average, our completed calls per hour decreased by 26.5% in this series of tests.

Tests for client campaigns F and G were conducted on March 28 and 29, 2003, using a telecommunications campaign and a campaign for a sale of a product. We used one line per employee for this test. On average, our completed calls per hour decreased by 27% in this series of tests.

Tests for client campaigns H-J were conducted on May 13-21, 2003, using a nonprofit education and advocacy campaign. We used two lines per employee for this test. On average, our completed calls per hour decreased by 13.67% in this series of tests.

I would be happy to provide any additional information about our methodology on these tests.

The FCC's reliance on reply comments from DMA (Order at ¶ 148, citing DMA Reply Comments at 31) is unavailing. The comments cited by the Commission at n. 521 do not discuss the loss of efficiency if the Commission were to adopt an abandonment standard of 3% and provide no independent support for the 3% standard itself, much less for reducing it from 5%.

The Commission and the FTC have provided consumers the tools they need to avoid unwanted solicitations: namely a do-not-call list to which they can add their telephone numbers and avoid calls. The Commission also requires that Caller ID information be transmitted by telemarketers, thus identifying the source of telephone calls received by consumers who have decided not to "opt-out" from calls. Consumers who do not have Caller ID will receive either a live voice greeting or a recorded message which promptly discloses the identity of the seller or originator of the call.

The Commission, however, inexplicably failed to consider these factors in adopting the 3% abandonment threshold. A 3% abandonment standard is not necessary in light of these three factors. These three factors, in all cases, protect consumer privacy rights, alleviate the allegorical and anecdotal concerns raised in comments regarding stalking, etc., to the Commission and show that the 3% standard is unjustified and unduly burdensome - it simply accomplishes nothing which has not already been achieved by the other three FCC requirements and does so at a devastating cost to business. Indeed, the Commission did not even consider the likelihood that the consumers most offended by abandoned calls might simply opt to sign on to the Do Not Call list (thereby avoiding the calls entirely) or could use the recorded voice or Caller ID information to determine who is calling. The Commission's failure to take these mitigating factors into account is not reasoned decision making.

B. The Commission's Regulatory Flexibility Analysis Did Not Consider The Effects Of The 3% Abandonment Standard On Small Businesses

Under the Regulatory Flexibility Act, the Commission must provide:

a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

5 U.S.C. § 604(a)(5). The Commission's RFA discussion did not provide the required explanation of why it rejected a 5% abandonment rate in light of the substantial harm on small entities.

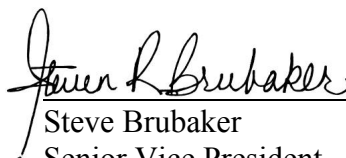
The record, however, set forth in the Report and Order is devoid of any systematic or nationwide review of the issue. The Report and Order does cite several allegorical examples of consumer irritation about abandonment, Report and Order, ¶147, n. 507 (two comments from consumers), n. 508 (hypothetical example regarding door-to-door salesmen), n. 509-514, but none of these examples provide a justification for a 3% standard versus any other percentage. None of these examples quantifies the monetary cost of abandonment.

Nor did either agency conduct a quantifiable study regarding the costs to businesses inflicted by a 3% standard, nor the gains to consumers by adopting a 3% standard instead of a 5% (or, for that matter, a 4% or 2%) standard. Report and Order, ¶ 149 discussing FTC Order, 68 Fed. Reg. 4492, 4642 (January 30, 2002). InfoCision has quantified these costs as applied to its business -- which would be devastating.

CONCLUSION

For the foregoing reasons, InfoCision respectfully requests that the Commission modify its Report and Order to change the first sentence of proposed 47 C.F.R. 64.1200(a)(6) to read “. . . abandon more than **5%** of all calls that are answered live by a person, measured over a 30-day period.”

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steve Brubaker", is written over a horizontal line.

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Dated this 25th day of August, 2003.

Exhibit A

3% Abandonment Rate Test #1									
1 Line Per Communicator									
Not Playing the Recorded Message									
Program	Date	Abandon Rate		Connect Rate		% Change	Completed Calls per Hour		% Change
		Target 5% Abandon	Target 3% Abandon	Target 5% Abandon	Target 3% Abandon		Target 5% Abandon	Target 3% Abandon	
A	03/29/03	5.95%	1.25%	24.88%	27.05%	9%	8.07	7.97	-1%
B	03/29/03	6.04%	0.61%	16.22%	15.34%	-5%	7.03	5.93	-16%
C	03/28/03	6.37%	0.73%	20.71%	15.09%	-27%	8.33	5.65	-32%
D	03/29/03	5.65%	1.22%	18.88%	16.07%	-15%	10.78	5.50	-49%
3% Abandonment Rate Test #2									
2 Lines Per Communicator									
Not Playing the Recorded Message									
Program	Date	Abandon Rate		Connect Rate		% Change	Completed Calls per Hour		% Change
		Target 5% Abandon	Target 3% Abandon	Target 5% Abandon	Target 3% Abandon		Target 5% Abandon	Target 3% Abandon	
E	03/28/03	6.24%	3.37%	16.83%	14.77%	-12%	9.93	7.25	-27%
E	03/29/03	6.24%	1.19%	16.83%	14.25%	-15%	9.93	7.35	-26%
3% Abandonment Rate Test #3									
1 Line Per Communicator									
Playing the Recorded Message									
Program	Date	Abandon Rate		Connect Rate		% Change	Completed Calls per Hour		% Change
		Target 5% Abandon	Target 3% Abandon	Target 5% Abandon	Target 3% Abandon		Target 5% Abandon	Target 3% Abandon	
F	03/29/03	6.32%	4.04%	16.33%	20.62%	26%	16.46	12.75	-23%
G	03/29/03	5.20%	1.65%	23.76%	23.18%	-2%	23.21	16.00	-31%
3% Abandonment Rate Test #4									
2 Lines Per Communicator									
Playing the Recorded Message									
Program	Date	Abandon Rate		Connect Rate		% Change	Completed Calls per Hour		% Change
		Target 5% Abandon	Target 3% Abandon	Target 5% Abandon	Target 3% Abandon		Target 5% Abandon	Target 3% Abandon	
H	5/13/03 - 5/21/03	4.46%	2.45%	32.79%	18.75%	-43%	20.57	20.45	-1%
I	5/13/03 - 5/21/03	6.94%	4.58%	8.30%	5.62%	-32%	9.63	6.61	-31%
J	5/13/03 - 5/21/03	3.35%	1.24%	34.40%	19.44%	-43%	15.80	14.37	-9%

Legend	
Program	Client Type
A	Financial Services 1
B	Financial Services 2
C	Financial Services 3
D	Financial Services 4
E	Financial Services 5
F	Product 1
G	Telecommunication 1
H	Non Profit 1
I	Non Profit 2
J	Non Profit 3